

is not concerned with taxability. Accordingly, the taxpayer's income tax return shall correctly compute the tax liability, even though in the opinion of the taxpayer it is immune from tax collection under the section. The tax shall be determined with respect to the entire gross income and not merely with respect to the portion of the earnings out of which tax may be collected. As to establishment of immunity from tax collection see § 301.7507-7.

Example. (1) An agreement, executed in the year 1954 between a bank and its depositors, provides (i) that certain assets are to be segregated for the benefit of the depositors who have waived (as claims against unsegregated assets of the bank) a percentage of the deposits; (ii) that 40 percent of the bank's net earnings, for years beginning with 1954, from unsegregated assets, shall be paid to the depositors until the portion of their claims waived with respect to unsegregated assets of the bank has been paid; and (iii) that the unsegregated assets shall not be subject to depositors' claims. The net income of the bank for the calendar year 1954 is \$10,000, \$4,000 produced by the segregated, and \$6,000 produced by the unsegregated assets. Such amount shall be considered the net earnings for the purpose of section 7507 in computing the portion of the earnings to be paid to depositors. The bank has an outstanding tax liability for prior years of \$7,000. The income tax liability of the bank for 1954 is 30 percent of \$10,000, or \$3,000, making a total outstanding tax liability of \$10,000. The portion of the earnings of the bank for 1954 remaining after provision for depositors is \$3,600 (\$6,000 less 40 percent thereof, or \$2,400). It will be assumed that of the total outstanding tax liability of \$10,000, \$3,600 may be assessed and collected, leaving \$6,400 to be collected from any excess of the segregated assets after claims of depositors against such segregated assets have been paid in full. No part of the \$6,400 immune from collection from 1954 earnings may be collected thereafter from unsegregated assets of the bank or earnings therefrom, so that except for any possible surplus of the segregated assets the \$6,400 is uncollectible.

(2) In the year 1955, the earnings are again \$10,000, \$4,000 from segregated and \$6,000 from unsegregated assets, as in 1954. However, the return filed shows income of \$5,000 and a tax liability of \$1,500. An investigation shows the true income to be \$10,000, on which the tax is \$3,000. The full \$3,000 will be assumed to be collectible. The \$600 difference between \$3,600 (the excess of earnings from unsegregated assets over the amount going to the depositors), and the \$3,000 tax for 1955, is not available for collection of the tax for prior years, which became immune as described above,

but may be available for collection of tax for subsequent years.

(c) No significance attaches to the selection of the years 1954 and 1955 in the example set forth in paragraph (b) of this section. The rules indicated by the example are equally applicable to subsequent or prior years not excluded by limitations.

§ 301.7507-6 Abatement and refund.

(a) An assessment or collection, no matter when made, if contrary to section 7507, is subject to abatement or refund within the applicable statutory period of limitations.

(b) Collection from a bank within section 7507(b) which diminishes assets necessary for payment of depositors, if made prior to agreement with depositors, is not contrary to the section, and affords no ground for refund.

(c) Any abatement or refund is subject to existing statutory periods of limitation, which periods are not suspended or extended by section 7507. In order to secure a refund of any taxes paid for any taxable year during the period of immunity the bank must file claim therefor.

§ 301.7507-7 Establishment of immunity.

(a) The mere allegation of insolvency, or that depositors have claims against segregated or other assets or earnings, will not of itself secure immunity from tax collection. It must be affirmatively established to the satisfaction of the district director that collection of tax will be contrary to section 7507. See also § 301.7507-8.

(b) Any claim, by a bank, of immunity under section 7507(b), shall be supported by a statement, under oath or affirmation, which shall show: (1) The total of depositors' claims outstanding, and (2) separately and in detail, the amount of each of the following, and the amount of depositors' claims properly chargeable against each: (i) Segregated or transferred assets; (ii) unsegregated assets; (iii) estimated future average annual earnings and profits; (iv) amount collectible from shareholders; and (v) any other resources available for payment of depositors' claims. The detail shall show the full

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amount of depositors' claims chargeable against each of the items in subdivisions (i) to (v), inclusive, of this subparagraph even though part or all of the amount chargeable against a particular item is also chargeable against some other item or items. There shall also be filed a copy of any agreement between the bank and its depositors, and any other agreement or document bearing on the claim of immunity. The statement shall show the basis, as "book," "market," etc., of valuation of the assets.

§ 301.7507-8 Procedure during immunity.

(a) *Statements to be filed.* As long as complete or partial immunity is claimed, a bank within section 7507(b) shall file with each income tax return a statement as required by § 301.7507-7, in duplicate, and shall also file such additional statements as the district director may require. Whether or not additional statements shall be required, and the frequency thereof, will depend on the circumstances, including the financial status and apparent prospects of the bank, and the time which is available for assessment and collection. If a copy of an agreement or document has once been filed, a copy of the same agreement or document need not again be filed with a subsequent statement, if it is shown by the subsequent statement, when and where and with what return the copy was filed. In case of amendment a copy of the amendment must be filed with the return for the taxable year in which the amendment is made.

(b) *Failure to file.* Failure of a bank to file any required statement will be treated as indicating that the bank is not entitled to immunity.

§ 301.7507-9 Termination of immunity.

(a) *In general.* (1) In the case of a bank within section 7507(a), immunity will end whenever, and to the extent that, taxes may be assessed and collected, within the applicable limitation periods as extended by section 7507, without diminishing the assets available and necessary for payment of depositors. Immunity of a bank within section 7507 (b) is terminated, as to segregated assets, whenever claims of de-

positors against such assets have been paid in full. See § 301.7507-3. As to segregated assets, the termination of immunity is complete, and any balance remaining after payment of depositors is available, within statutory limitations, for collection of tax due at any time. However, taxes of the bank will be collectible from segregated assets only to the extent that the bank has a legal or equitable interest therein. Assets as to which there has been a complete conveyance for benefit of depositors, and the bank has bonafide been divested of all legal and equitable interest, are not available for collection of the bank's tax liability.

(2) As to unsegregated assets of a bank within section 7507(b), immunity terminates only as to taxes thereafter becoming due. When taxes are once immune from collection, the immunity as to unsegregated assets is absolute. But see paragraph (a) of § 301.7507-4.

(b) *General creditors.* While the immunity from tax collection is for protection of depositors, and not for benefit of general creditors, in some cases the immunity will not end until the assets are sufficient to cover indebtedness of creditors generally. This situation will exist where under applicable law the claims of general creditors are on a parity with those of depositors, so that to pay depositors in full it is necessary to pay all creditors in full.

(c) *Shareholder liability.* In determining the sufficiency of the assets to satisfy the depositors' claims, shareholders' liability to the extent collectible shall be treated as available assets. See § 301.7507-7.

(d) *Deposit insurance.* Deposit insurance payable to depositors shall not be treated as an asset of the bank and shall be disregarded in determining the sufficiency of the assets to meet the claims of depositors. For taxable years ending on or after April 22, 1992, deposit insurance does not include Federal Financial Assistance (as defined in section 597) and other payments described in section 597(a) prior to its amendment by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 and, therefore, such payments must be taken into account to determine whether a bank's assets